In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1672

T. W. GUTHRIE, ET AL., PETITIONERS

v.

ALABAMA BY-PRODUCTS COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to the Court's order of October 10, 1972, inviting the Solicitor General to express the views of the United States in this case.

1. Petitioners are numerous riparian landowners along the Warrior River—a navigable river in Alabama—and its tributaries. Petitioners brought this action in the United States District Court for the Northern District of Alabama, alleging that the respondent companies have discharged and are discharging industrial wastes into the tributaries of the Warrior River in violation of Section 13 of the Rivers and Harbors Act of 1899 (also known as the Refuse

seeking to impose statutory criminal penalties or by bringing a civil action for civil injunctive relief. Cf. *Connecticut Action Now, Inc.* v. *Roberts Plating Co.*, 457 F. 2d 81 (C.A. 2). The dismissal of petitioners' claim under the Refuse Act does not leave them without a remedy, since they are free to pursue their claims under the common law of nuisance or trespass. The question whether such an action would arise under the federal common law and thus could be brought in the federal courts under 28 U.S.C. 1331(a) (see *Illinois* v. *City of Milwaukee*, 406 U.S. 91, 8–108) was not presented to the courts below and thus is not in issue here.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1973.

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